
(1986) 03 BOM CK 0016

In the Bombay High Court

Case No : Appeal No. 252 of 1986 from Writ Petition No. 1318 of 1985

A.N. Shaikh and others

APPELLANT

Vs

Suresh B. Jain

RESPONDENT

Date of Decision : 27-03-1986

Acts Referred:

Income Tax Act, 1961 — Section 245

Citation : (1986) 58 CTR 204 : (1987) 165 ITR 86

Hon'ble Judges : Paresh Nath Mookerjee, J;Desai, J

Bench : Division Bench

Judgement

Desai, J.—We find no substance in this appeal. The learned single judge has found that the officer has acted in a manner not warranted by the statutory provision, viz., section 245 of the Income Tax Act. Section 245, in our opinion, does not permit any construction other than the one taken by the lower court and, in our opinion, the concession made by Mr. Devadhar before the single judge was absolutely in accordance with the statutory provision. The intimation given in the assessment order for 1983-84 that the tax liability of the respondent (original petitioner) came to Rs. 7,47,732 and that the amount of refund for the previous assessment year 1982-83 is adjusted against the said liability does not amount to intimation in writing as contemplated by section 245. Section 245 clearly requires a previous intimation of the proposed action for adjustment and not a simultaneous intimation. That the Department can argue in this manner shows the length to which the Department can go in its perverse interpretation of the statutory provision.

2. Mr. Dhanuka has addressed us on the equities. To a certain extent, he is right. If the Income Tax Department had revealed itself in other proceedings to be conscious of the equities in favour of the taxpayers, we may have considered giving a direction for deposit of the amount in court and certain time within which the requirement of section 245 could have been complied with. However, Tax Benches and other judges dealing with tax matters have been repeatedly

told by counsel appearing for the Tax Commissioner that there is no equity, no reason and no logic in the law of Income Tax and the rights and obligations of the Department and the assessee are to be governed by the strict letter of the law. Those who live by the strict letter of the law must also occasionally suffer by that letter of the law. We have no material except Mr. Dhanuka's bare averment that this amount will not be recovered from the respondent-assessee if refund is made. If that be so, the blame must squarely rest on the officer who has ignored the clear provisions of section 245 and acted in a manner contrary thereto. He could have complied with the statutory requirement after his attention was drawn to the illegality of his order (impugned in the writ petition) but failed to do the needful and has persisted in justifying the correctness of his action.

3. Mr. Joshi points out that by the order dated March 7, 1986, the single judge had given two weeks" time to the Department for complying with the writ. The two weeks undoubtedly expired on March 21, 1986. However, we had made it clear on the earlier occasion when we were moved that we would deem it sufficient compliance with the said order if the Department complies with the direction immediately on the disposal of the appeal.

4. Since the appeal is being disposed of today by being dismissed summarily as having no substance, we make it cleat that in order to save itself from proceedings for contempt, the Department has time up to 5 p.m. today to send the necessary refund order or cheque for amount envisaged in the order of the single judge to the advocate for the respondent-assessee.

5. In this view of the matter, the appeal is to stand summarily dismissed.

6. Mr. Dhanuka applies for time. In view of the fact that even the extension of the above period has been granted as a matter of indulgence and we have found no substance in the plea of the Income Tax Department, this application is rejected as not being bona fide or proper.